

Baxley, Mike

From: Crosby, Michael
Sent: Saturday, April 09, 2016 7:37 AM
To: sbyrne@scana.com
Cc: Carter, Lonnie; MARSH, KEVIN B; Baxley, Mike; Pelcher, Steve; Cherry, Marion; Cherry Marion
Subject: VCS - Privileged and Confidential

Steve,

Our team met Wednesday to continue preparation for the President's meeting on April 13. As a result of this meeting, following is Santee Cooper's position on two of the agenda items:

2. Construction Milestone Payment Schedule (CMPS)

As you are aware, there currently exists a large delta between the Owners' position and WEC's position on cash flow, particularly on the front end of the schedule. I attended the CMPS meeting on Thursday with WEC and Jeff Archie. Although the meeting was informative, knowing WEC's record for dragging out negotiations, Santee Cooper recommends that the internal staff and the consultants assigned to this effort begin work with legal counsel, including George Wenick, to prepare a case as it appears this issue will likely go before the DRB.

4. \$100M Payments – April, May, June Installments

Also as you are aware, after the January, February, and March \$100M payments - we estimate the invoice true-up to be approximately \$157M.

In the absence of adequate assurance from Danny Roderick that true-up funds will be immediately available to the Owners at the 6 month mark, Santee Cooper will not make its 45% share of the \$100M payments beginning on the April installment. Santee Cooper's position forward will be to average the phantom invoices received to date, fund 45% of that average, and hold the balance of the April, May, and June \$100M installments in escrow for WEC to use should it elect to ramp up work on site. Should this method serve to underpay WEC on any given month, the underpaid amount will be debited against Santee Cooper's share of the true-up account stated above.

On the balance of the agenda items, Lonnie and I are developing an objective of what Santee Cooper would like to accomplish during the meeting. We would like your and Kevin's input and will share this with you early next week.

I will be on site Monday and Tuesday of next week if you need to chase me down.

Have a good weekend Steve.

Michael

From: Carter, Lonnie
 Sent: Tuesday, April 05, 2016 12:05 PM
 To: MARSH, KEVIN B

Cc: ARCHIE, JEFFREY B; Crosby, Michael
Subject: RE: Update/Thoughts

Kevin,

I agree. Michael briefed me on last Thursday's pre-meeting and believes Garry Flowers and Jeff Benjamin both have a good understanding of the agenda and should be in a good position to prepare David Seaton & Danny Roderick for April 13.

Beyond that, I believe you and I (and our legal teams) need to continue strategy discussions around the milestone payment schedule, Toshiba's financial health, and the best approach to dealing with the \$100M installment issue assuming Danny does not get back to you with an adequate assurance that the true-up money will be available at the 6 month mark. In response to your March 28 email, Danny promised a "more thorough answer" and stated that would be forthcoming not later than Wednesday, March 30; we are concerned about Danny's delay in responding.

As I understand after the board meeting on March 21, our legal teams

Redacted - Privileged

Redacted - Privileged

On the milestone payment schedule, Michael believes this issue will likely come to an impasse over cash flow soon. As I understand there is a call this week with Jeff Benjamin, but a large gap exists between our position and WEC's position on cash flow, particularly on the front end.

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Redacted - Privileged

I checked my notes on the team working on the Bechtel report and they agree with yours that the team is to get back to us by April 30. The Milestone Payment team was to get back to us this week (first week in April) which they have done.

Brief conference call may help us and our teams be prepared for the CEO meeting with WEC and Fluor. I will ask Amy to work with Paula to set something up.

Thanks,
Lonnie

.....

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "Agreement") is made and entered into as of this 3 day of October, 2016, by and between the South Carolina Public Service Authority, a body corporate and politic organized pursuant to South Carolina statutes ("Santee Cooper") and McGriff, Seibels & Williams, Inc., a corporation organized and existing pursuant to the laws of the State of Alabama ("McGriff").

1. **Purpose; Certain Definitions.** Santee Cooper wishes to retain McGriff as a consultant for purposes of evaluating various options for insuring against risk related to Santee Cooper's interests in the construction of V.C. Summer Nuclear Generating Stations No. 2 and 3 ("Risk Consulting Services"). In connection with receiving these Risk Consulting Services, it may be necessary for Santee Cooper to disclose to McGriff certain information which Santee Cooper desires McGriff to treat as confidential.

2. **Confidential Information.** For purposes of this Agreement, the term "Confidential Information" means any and all non-public information of a business nature, including without limitation business plan information as it relates to Santee Cooper's future and/or current: (i) business model; (ii) nuclear construction contracts; and (iii) power and energy requirements.

a. Confidential Information shall not include information which McGriff can demonstrate: (i) was in the public domain at the time of its disclosure through no act or failure to act on the part of McGriff; or (ii) comes into the public domain after its disclosure through no act or failure to act on the part of McGriff.

3. **Non-use and Non-disclosure.** McGriff agrees not to use any Confidential Information of Santee Cooper for any purpose except to test, evaluate, and engage in discussions related to its Risk Consulting Services. McGriff agrees not to disclose any Confidential Information of Santee Cooper to third parties other than as permitted by this Agreement. McGriff further agrees not to disclose any Confidential Information of Santee Cooper to its employees, agents, independent contractors and otherwise affiliated parties, except to those employees, agents, independent contractors and otherwise affiliated parties that have demonstrated a reasonable need to have the information in order to evaluate or engage in discussions related to the Risk Consulting Services.

4. **Maintenance of Confidentiality.** McGriff agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of Santee Cooper. Without limiting the foregoing, McGriff shall take at least those measures that it takes to protect its own most highly confidential information. McGriff shall ensure that each agent, independent contractor and party who is otherwise affiliated with McGriff, and who has access to the Confidential Information of Santee Cooper, is subject to terms of confidentiality no less stringent than the terms of this Agreement.

a. At the conclusion of the Risk Consulting Services, or upon the request of Santee Cooper, McGriff shall immediately return all of Santee Cooper's Confidential Information and will not retain any copies, extracts, electronic media, or other reproductions in whole or in part of such

material; provided however, that nothing contained herein shall require McGriff to alter or deviate from its normal record retention policies. If Santee Cooper consents, instead of returning such materials, all of its Confidential Information shall be destroyed and McGriff shall furnish a sworn affidavit to this effect. If Santee Cooper consents, McGriff may delete any and all references to Santee Cooper's Confidential Information present in McGriff's work product and retain only the redacted versions of such documents. McGriff shall furnish a sworn affidavit affirming that its only copies of documents created by it in the course of providing the Risk Consulting Services have been redacted to remove all references to Santee Cooper's Confidential Information.

5. **No Required Disclosure or Warranties.** Nothing in this Agreement shall be construed as an obligation on Santee Cooper to disclose information or evaluation materials to McGriff. Santee Cooper shall not be considered to have made or make any representation or warranty as to the accuracy or completeness of any information provided hereunder.

6. **Notice.** Any notice required by this Agreement shall be in writing and shall be given either personally or by overnight or express mail courier. Notices shall be deemed sufficiently given if and when received by the other party to be notified at its address listed below. Notices shall be addressed as follows:

If to McGriff:

McGriff, Seibels & Williams, Inc.
Attn: Patrick Maguire
Senior Vice President
2211 7th Avenue South
Birmingham, Alabama 35233

If to Santee Cooper:

South Carolina Public Service Authority
Attn: J. Michael Baxley
Senior Vice President and General Counsel
One Riverwood Drive
Moncks Corner, South Carolina 29461

Either party may, by written notice to the other, change its address for receiving such notices.

7. **Term.** The obligations under this Agreement shall survive until the earlier of three years or such time as all of Santee Cooper's Confidential Information disclosed hereunder becomes publicly known and made generally available through no action or inaction of McGriff.

8. **Assignment.** McGriff shall not assign, delegate, or subcontract this Agreement or any rights or obligations hereunder without the prior written consent of Santee Cooper.

9. **Remedies.** The parties agree that monetary damages would not be a sufficient remedy for any breach of the secrecy provisions of this Agreement and that the non-breaching party shall be entitled to seek equitable relief, including injunctive relief and specific performance. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or equity, including but not limited to, remedies for

breach of confidentiality, breach of contract, breach of contract accompanied by a fraudulent act, interference with a contractual relationship, unfair trade practices, conversion, and civil conspiracy. In the event any court action is commenced to enforce any provision of the Agreement, the substantially prevailing party will be entitled to recover from the other party its out-of-pocket and court costs and reasonable attorney fees.

10. **Exemplary Nature of Lists.** Any listing of items in this Agreement shall not be considered exclusive, have been listed by way of example only, and are not restricted by the canon *ejusdem generis*.

11. **Governing Law.** This Agreement and its addenda shall be interpreted and construed and the legal relationship covered herein shall be determined in accordance with the laws of the State of South Carolina, without regard to conflict of laws provisions. The Parties furthermore submit to the appropriate court within the State of South Carolina as the applicable forum for any disputes arising under or in any way related to this Agreement and agree that said court shall be the court of competent jurisdiction in all respects to hear such matters.

12. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, whether written, oral, express or implied, between the parties with respect to the subject matter of this Agreement.

13. **Amendments.** This Agreement may only be amended by a written instrument executed on behalf of both parties hereto.

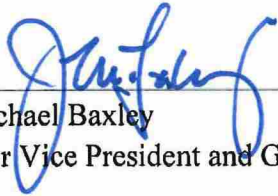
14. **Non-Waiver.** Any failure by Santee Cooper to enforce any provision of this Agreement shall not constitute a waiver thereof or any other provision of the Agreement.

15. **Opportunity to Review.** The parties affirmatively acknowledge that they have read this Agreement carefully, that they have had ample opportunity to consult with their attorneys concerning the provisions, conditions and effect thereof, that they know and understand the contents hereof and that there is no agreement other than that expressed herein.

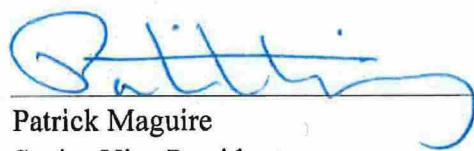
16. **Miscellaneous.** Reference to any party in this Agreement shall include that party's affiliates, agents, attorneys, directors, employees, officers, owners and subsidiaries. This Agreement shall bind and inure to the benefit of the parties hereto and their heirs, successors and permitted assigns. The invalidity or unenforceability of any provision of this Agreement shall not render invalid or unenforceable any other provision hereof. In the event that a provision of this Agreement is rendered invalid or unenforceable, the parties shall exercise reasonable efforts to achieve the purpose of that provision by valid and enforceable means where possible. No provision of this Agreement shall be interpreted against any party because such party or its legal representative drafted such provision. Each signatory warrants that s/he is authorized to execute this Agreement on behalf of the party to be bound and that there is no legal reason that the party is prohibited from entering this Agreement.

IN WITNESS WHEREOF, each of the parties, intending to be legally bound by the provisions of this Agreement, has caused its duly authorized representatives to execute this Agreement.

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

By: 
J. Michael Baxley
Senior Vice President and General Counsel

McGRIFF, SEIBELS & WILLIAMS, INC.

By: 
Patrick Maguire
Senior Vice President

Modica, Hazel

From: Baxley, Mike
Sent: Monday, November 28, 2016 3:24 PM
To: Modica, Hazel
Subject: FW: Wednesday's SCE&G/Santee Cooper meeting
Attachments: Nuclear Timelines--Project Management.docx; Nuclear Timeline-Bankruptcy.docx; Securitization Assessment Nov 28 2016.doc.docx

Please print this email and each of the attachments for me. Thanks

From: Baxley, Mike
Sent: Monday, November 28, 2016 12:53 PM
To: Botelho, Crystal
Cc: Carter, Lonnie
Subject: Wednesday's SCE&G/Santee Cooper meeting

Crystal, please send the email below out under Lonnie's email to Kevin Marsh. Note bcc. Thanks.

Kevin,

This letter is sent to assist you in preparation for our meeting on Wednesday (11/30), as both our teams prepare for the joint Board meeting scheduled on December 5. We both share the strong desire to work as a team to see the Summer 2&3 Project successfully completed. This letter is offered in that spirit.

From Santee Cooper's perspective, there are 3 primary items we need to discuss on Wednesday. Candidly, the first two have become items of frustration for Santee Cooper, and have put me in an awkward position with my Board, who are insisting to know why no action has been taken. I asked Santee Cooper's team to prepare timelines which show when the items were raised and discussed. These timelines are written from Santee Cooper's perspective, and perhaps will provide insight to your team.

1. Increased project management expertise in large scale EPC construction.
2. Bankruptcy counsel.
3. Release of the Bechtel Report to the Cooperatives.

Increased project management expertise in large scale EPC construction--We need to be prepared to discuss with our Board, after two years of requests and an affirmative commitment from you on more than one occasion, why this has not yet been done. The attached timeline is illustrative.

The formation of the CORB was SCANA's response to the Betchel Report and Santee Cooper's request for better Project oversight with large EPC experience. Based on the recommendations we heard at both CORB briefings, I am concerned that we learn critical information too late from an outside team that comes in quarterly for a few days, which should have been brought to our attention by our teams. The information we learned last week was very important and key to the effectiveness of our President's Meetings with WEC and Fluor.

As we discussed following the call, we must determine if our teams have the knowledge and expertise to glean this key information. If they do have the knowledge and expertise, then what are the reasons the information does not reach us? If they do not have the knowledge and expertise, what can be done to staff in

such a manner to have this information available in a timely manner? I recommend that we move quickly to act on the CORB's recommendations and set specific timeframes for our team to implement.

Bankruptcy counsel—Bankruptcy expertise would significantly inform our team as we negotiate with WEC going forward. Our separate, collective and independent analysis suggests that the fixed price option offered by WEC is likely significantly less than the cost WEC will incur to complete the Project. This is the very reason that we selected the fixed price. Regrettably, we must anticipate WEC having financial difficulty completing the Project, particularly in a timely manner. We should consider all options available to us that will insure WEC lives up to our Agreement. Our strategies should contemplate potential bankruptcies for both WEC and Toshiba. Toshiba's weakened financial condition is an unfortunate development as WEC's guarantor that we must also consider.

After no action on our repeated requests on this topic, as indicated in the attached timeline, I asked our legal team to find bankruptcy counsel. When we advised the SCANA team of this and our recommendation, no response has been received. This issue is of such concern to the Santee Cooper Board (as the timeline shows this was brought up at our first joint Board meeting) that I further asked our legal team to conduct an assessment of the securitization of the Project in the event WEC is unable to finish. This is something that would typically be undertaken by counsel with bankruptcy expertise. The securitization assessment is attached for your benefit. We will be prepared to discuss it further on Wednesday.

Release of the Bechtel Report to the Cooperatives—We are backed into a corner on this. Our largest customer, having learned of it through intervention in SCE&G's fixed price petition, demands a copy of the report. Our requests to your legal team to put some parameters around the disclosure has been met with the response that we should not release it. Not releasing this information will likely bring formal requests that will be an untenable position for both our companies.

We look forward to our discussion on Wednesday.

Thanks,

Lonnie

Nuclear Timeline—Additional Project Management Request

For well over two years, the Santee Cooper Board and management team have been pressing SCANA to substantially enhance the construction project management team by repeated direct requests, through the Bechtel analysis, and via the CORB process, as indicated by the timeline below.

Timeline: Project Management

- May 2014: **Roll-up Letter** - Shortly after sending the May 2014 roll-up letter to WEC receiving the \$1B EAC (Aug), Santee Cooper began discussions with SCE&G executives to engage outside assistance with management of the EPC contract.
- Sep 3, 2014: **Marsh email to Carter (September 3, 2014 at 2:06:00 PM EDT) ...**
- “We are ready to move forward with hiring/engaging an additional resource with significant construction expertise to assist us with evaluating the construction schedule and project status. I believe having this person on our staff vs. working as a consultant will avoid conflicts with the consortium on proprietary matters.”
- Feb 17, 2015: **SCANA Meeting (Timmerman’s old office)** - Marsh, Byrne, Carter, Watson, Crosby) - Santee Cooper suggests Bechtel for project review, providing SCANA with a project assessment proposal to assist in identifying areas for improvement.
- Apr 7, 2015: **Bechtel Meeting (SCANA Hangar)** - Team Marsh, Team Carter, & Bechtel – Bechtel introduces its nuclear team and presents assessment proposal. Kevin agrees to seek SCANA Board approval to go forward with an assessment.
- Apr - Aug: **SCANA and Santee Cooper Board approvals received** - to move forward with a Bechtel project assessment.
- Aug 10, 2015: **Bechtel Assessment** – finally begins. Much time lost April through July getting Roderick & Asherman engaged and NDAs and PO in place. To push forward, Santee Cooper made the Bechtel assessment a “requirement” to proceed with the (stalled) negotiations that eventually led to CB&I exiting the Project.
- Aug – Oct: **Bechtel Calls** – Craig Albert holds weekly calls with Marsh & Carter. SCANA NND project leadership has limited involvement in the assessment. Cherry steps up to lead effort on behalf of Owners. Cherry engages Archie in a daily effort to force WEC (Benjamin / Roderick) to release engineering & schedule documents. Carl Rau & Roderick eventually have a heated email exchange. Documents are finally released to a reading room only - the assessment effort is a challenge.
- Oct 22, 2015: **Bechtel Meeting (SCANA HQ)** – Bechtel executive level report-out of project assessment, findings, and high-level recommendations. Bechtel promises a final report in 2–3 weeks. SCANA management expresses hesitation, routes

assessment through legal department, indicates concern Bechtel's objective is to seek a long-term engagement on the Project.

Nov 12, 2015: **Bechtel Assessment Report – issued to George Wenick** - Weeks go by with Wenick/Bechtel wrangling over Wenick's rejection of initial report, redactions, timeline removal, critique of project management. Baxley, Pelcher, Lindsay, and Bynum meet with Wenick (in Atlanta) for a review and final disposition of report.

Feb 5, 2016: **Bechtel Project Assessment Report** – Numbered copies of final report released to Santee Cooper by SCANA.

Mar 4, 2016: **Santee Cooper Recommendations** – Five formal recommendations forwarded to Marsh:

1. Construction Milestone Payment Schedule
2. Project Evaluation and Assessment by Owners
3. Quarterly Meetings with Toshiba / WEC / Fluor
4. Evaluation of Fixed Price Option
5. Professional Oversight of EPC Agreement

Mar 7, 2016: **SCANA Meeting (Kevin's conference room)** – Marsh, Byrne, Archie, Lindsay, Bynum, Team Carter – group discusses Bechtel Report and Santee Cooper formal recommendations. Carter praises SCANA's project management team for its operations experience and ability to work well with NRC, but expresses concern over inability to hold Consortium accountable.

Marsh agrees to have the SCANA and Santee Cooper teams study the Bechtel Report, agree on actionable recommendations. Marsh agrees to add EPC resources to his team to fill any gaps/needs identified.

Marsh, Byrne & Archie float Construction Oversight Review Board (CORB) approach as a possible resource solution ... same was being used at Vogtle.

CMPS – at Santee Cooper's request, Marsh agrees to hire Bechtel (Jason Moore) on a limited scope basis to assist team in development of the CMPS. Action assigned to Archie. Archie first attempts to hire Jason Moore as an independent contractor. Subsequently, Craig Albert instructs his staff to move on.

Mar 11, 2016: **CEO Meeting (Columbia)** - Marsh, Harold Stowe, Carter, Leighton Lord – meet to discuss Santee Cooper's formal recommendations and expectations of SCANA for the planned Mar 21 Joint Board meeting.

Mar 18, 2016: **Marsh email to Carter (March 18, 2016 at 8:25:34 AM EDT)** ... pertinent excerpts provided below:

“Our team is looking forward to meeting with the Santee Board next Monday ...”

“We appreciate the effort behind the recommendations provided to us regarding your views on project issues. We have carefully considered your concerns and, as we discussed in our meeting last week, we appear to be in alignment on the first four. We agree in principle with the concern expressed in Item 5 related to additional oversight of the project and have a plan of action that we believe will address the issue appropriately. Our first step in this regard is to staff a Construction Oversight Board.

“Next we would seek an appropriate number of experienced EPC, and/or large construction project personnel to add to the new nuclear team. These individuals would be available to assist the current Project Management Office team and site leadership in assessing and addressing issues arising during construction. I am confident that the number and specific type of personnel needed in this capacity will be informed by the work of our teams who are currently summarizing a list of recommendations for the project going forward. We expect these teams to complete their work and provide a report to senior management by the end of April.”

Mar 21, 2016: **Joint Board Meeting 1 (Columbia Hilton)** – discussed Bechtel Report, Santee Cooper March 3 formal recommendations and SCANAs plan forward to address issues.

Marsh committed that SCANA and Santee Cooper would work to identify actionable Bechtel recommendations, SCANA would add EPC experts to its team, and that SCANA would charter a V.C. Summer Construction Oversight Review Board to help SCANA with project execution.

Apr 7, 2016: **SCANA feedback on Bechtel Assessment** – Cherry and Crosby meet with Archie and Bynum. In response to Marsh’s request for the teams to work on the Bechtel assessment recommendations, Bynum gave Santee Cooper a spreadsheet containing SCANA feedback from several members of the NND project management team. Brad Stokes (SCANA Manager of Engineering) had not been a part of the Bechtel assessment review effort, even though many issues tied to engineering were impeding progress on the Project.

Apr 15, 2016: **Santee Cooper feedback on Bechtel Assessment** – Also in response to Marsh’s request for the teams to work together on the Bechtel assessment, Santee Cooper forwarded Archie and Bynum Santee Cooper’s formal review of the Bechtel assessment which included a cross-reference to SCANAs feedback. Santee Cooper’s feedback was consistent with its Mar 3rd recommendations calling for the addition of EPC expert resources to assist SCANA project management with executing Bechtel recommendations on engineering, procurement, project controls & scheduling.

Archie called Crosby and Byrne emailed Crosby a few days later and confirmed that they had received and reviewed Santee Cooper’s feedback ... and that the teams were in agreement.

May 19, 2016: **SCANA meeting – CMPS & Bechtel Assessment** – Marsh, Byrne, Archie, Carter, Crosby, Cherry meet.

CMPS: WECs front-end loaded CMPS discussed in detail. Santee Cooper again requested SCANA seek outside expertise to assist Owners with this issue.

Bechtel Assessment: Due to the progress WEC & Fluor appear to be making on procurement issues – Santee Cooper agreed to narrow the focus of the Bechtel recommendations to only engineering issues.

Jun 17, 2016: **Santee Cooper Board Meeting (Wampee)** – Fixed Price Option formally introduced to the Santee Cooper Board. .

Jun 18, 2016: **Crosby email to Archie (June 18, 2016 10:50 AM EDT)** – Marsh, Carter and Byrne were copied ... pertinent excerpts provided.

“Yesterday, Marion brought me the attached document that you gave him Thursday on the Project Assessment Report.... SCANAs recommendation, and apparent next step, is to perform (another) 3rd party assessment on how to make things better.....I am not supportive of just another 3rd party assessment. The assessment completed Q3 2015, at a cost of \$1M, was sufficient for Santee Cooper to recognize the need to on-board experts help to work on key issues and improve the management of the Project.” No response was received.

Jun 20, 2016: **Joint Board Meeting 2 (Nexsen Pruet)**

Fixed Price Option: SCANA presents its analysis of the Fixed Price Option.

CORB: Peggy Pinnell (Santee Cooper Director) reminds Archie of his commitment in the Mar 21 joint meeting to get the CORB established as soon as possible. Archie recommit to getting the CORB established by Jul 20.

Aug 2016: **CORB Review #1** – The Construction Oversight Review Board held its first review in Jul & Aug. The initial review provided for a high-level review of the project schedule, construction, construction to startup turnover planning, engineering, startup, project management, procurement, document control, vendor supplied equipment, and component testing. An executive level exit meeting was held on Aug 18 – primary takeaways follow:

- Schedule has too many activities (238K vs 60K at Watts Bar 2)
- Subcontracts are not in schedule
- Engineering is impeding construction
- Engineering not in schedule – being handled by lists
- Project Management – must get aggressive to hold EPC accountable, Team will not make it without some help

CORB Chairman (Skaggs) promised final report in 2 weeks.

Sep 16, 2016: **Draft CORB Report #1** – received from SCANA after Carter discussed with Marsh that the report was past due. Report was in-house SCANA and being reviewed by Archie. Bynum forwarded a copy to Baxley and reminded Santee Cooper the report was confidential.

Oct 13, 2016: **SCANA action on CORB Report #1** – Williams requests an update from Archie on Oct 5. Jones forwards a report on Oct 13. The information received was primarily a report on what WEC & Fluor are doing to address CORB recommendations on schedule, engineering, project metrics, etc.

Conclusion: SCANA's project management team has many areas of strength (nuclear safety culture, operations, NRC management) but does not have the comprehensive skills and depth of experience necessary in engineering, scheduling, project controls and construction to manage a large new build project laced with complexities. Those complexities being (1) a first of a kind nuclear technology (2) being deployed by an over-extended equipment manufacturer (Westinghouse), (3) backed by an incompetent engineering firm responsible for project integration (Stone & Webster now WECTEC), and (4) a Contractor that has been disingenuous on multiple issues. The Project would be greatly benefitted by infusing the current project management team with a framework of qualified EPC managers charged with working collaboratively with the Owner and Consortium to identify areas for improvement, suggest proven solutions, and to provide an independent perspective on actual progress – the effort aimed at increasing the accountability of the Consortium and the success of the Project. After three years of project delays, and now another five months of Unit 2 delay realized in 2016 – there should be no shame in reaching out for qualified assistance.

Nuclear Timeline—Project Bankruptcy Counsel

Beginning with the precipitous decline of Toshiba's credit rating and financial strength, the Santee Cooper Board and management team have been requesting that SCANA retain bankruptcy counsel for the project. The following timeline is illustrative:

Timeline: Bankruptcy Counsel

April 2015: Toshiba announces accounting scandal.

July 21, 2015: Toshiba senior executives and Board of Directors resign.

Dec 22, 2015: Moody's reduces Toshiba long term bond rating to junk status.

Mar 2016: Santee Cooper approaches Nelson Mullins bankruptcy counsel about Project, conflicts check shows WEC is a client of Nelson Mullins in some capacity.

Mar 21, 2016: **Joint Board Meeting 1 (Columbia Hilton)** – Boards discussed declining financial condition of Toshiba and what financial response the Owners should make to poor project progress. Owners' counsel met with George Wenick that afternoon and Santee Cooper requested that bankruptcy counsel be retained for the Project as a proactive measure given Toshiba's and potentially WEC's financial condition.

Apr 4, 2016: **Pelcher email to Bynum (April 4, 2016 4:01 PM EDT)** – pertinent excerpt

"... has SCE&G secured a project bankruptcy attorney to help us think through how Toshiba's financial difficulties might impact Westinghouse and ultimately us? You may recall this is a topic we discussed during our Mar 21 (post board meeting) nuclear attorneys meeting ..."

Jun 7, 2016: **Crosby email to Byrne (June 07, 2016 6:03 PM EDT)** – pertinent excerpts

"... Lonnie asked me to forward you and Kevin a proposed agenda for the joint meeting on the 20th. Here is what I have so far ... welcome your comments.

1. Fixed Price Option
 - a. SCANA analysis – presentation
 - b. PSC Testimony – any comments that can be shared
 - c. Draft SCANA letter to Santee Cooper – recommending FPO
 - d. Potential Bankruptcy – outside legal opinion & plan to address"

Jun 16, 2016: **Marsh email to Carter (June 16, 2016, at 3:39 PM)** - pertinent excerpts

"Based on our internal discussions, we propose an agenda as follows:

1. Follow-up on issues from our last joint meeting;
2. Consideration of the fixed price option; and
3. Update on the milestone schedule/Dispute Resolution Board (DRB) issue”

“Through a number of emails I have seen other topics that your board may want to discuss. We are prepared to do that, but we believe that such a discussion should occur when we have more time. Issues, such as the potential bankruptcy of Toshiba or Westinghouse are critical, but would prefer to have some detailed discussions and debate within our project teams before making a formal presentation to either of our boards.”

Jun 16, 2016: **Carter email to Marsh (Jun 16, 2016, 7:20 PM)** – pertinent excerpts

“... Finally, I agree with you that further staff level discussion on the ramifications of a Toshiba or Westinghouse bankruptcy would be useful and should precede any formal presentations to our boards on this matter. With that said, the possibility of such a bankruptcy cannot be entirely divorced from our joint board discussions on Monday. For example, Item No. 2 on your agenda relating to the fixed price option obviously shifts risk away from the Owners and to Toshiba/Westinghouse, making their credit worthiness all the more important. Similarly, with respect to Item No. 3, getting the milestone payment schedule right will make it less likely that Westinghouse view as desirable a strategic Chapter 11 bankruptcy to rid itself of uneconomical executory contract.”

Jun 17, 2016: **Carter email to Marsh (June 17, 2016 5:12 PM)** – pertinent excerpts

“At today’s Santee Cooper Board meeting several questions regarding the implications of a Toshiba bankruptcy came up. Some we could address others not. I would anticipate similar questions Monday.....”

Jun 23, 2016: **Pelcher email to Bynum (June 23, 2016, at 5:12 PM)** – pertinent excerpts

“... Al, one of my notes from Monday’s Joint SCANA/Santee Cooper Board Meeting in Columbia was an interest by members of the respective boards in retaining project bankruptcy counsel to provide strategic advice on the challenges associated with Toshiba’s financial difficulties arising out of last year’s accounting scandal and the risk that posed to the Owners and the project.

“As I understood the discussion from Monday, our joint boards had an interest in retaining as project counsel someone who would be able to represent us both now and in the event of a bankruptcy without having to get a waiver from Westinghouse or Toshiba. My notes indicate that you tasked George Wenick to identify potential project bankruptcy counsel for this purpose.”

“One more thing - - and just speaking for myself - - in the penultimate paragraph of his June 16, 2016, at 3:39 PM Email, below, Kevin Marsh advanced the idea of

possibly making a “formal presentation” to our boards on the bankruptcy/insolvency issue after some further analysis/discussion among staffs of SCE&G and Santee Cooper. Given the demonstrated interest in this issue by our board, I think this is a very good idea.”

“I would think that the content of such a board presentation would be informed not only by the analysis of the project bankruptcy attorney we eventually (hopefully very soon) retain, but also by a more granular understanding of Toshiba’s and Westinghouse’s financial situation. Although as a Japanese company the particulars of Toshiba’s financial situation might be a bit opaque to us over here, I would think that there would be resources availability to allow us to develop a better picture of its situation and prospects.”

Jun 24, 2016: **Bynum email to Pelcher (June 24, 2016 1:53 PM) – pertinent excerpt**

“Ron and I talked to George yesterday about adding bankruptcy support. He is looking for candidates. We are likely comfortable with whoever he suggests”

Jun 30, 2016: **Pelcher email to Bynum (June 30, 2016 11:41 AM) – pertinent excerpt**

Al: Following Up on our Email Exchange of late last week on bankruptcy counsel, and anticipating that this issue might be raised by one of our board members in connection with today’s meeting, **has any progress been made in securing project bankruptcy counsel?** As you may remember, the issue of WEC/Toshiba bankruptcy/insolvency was on the mind of several of our board members during the June 20th Joint Meeting.”

Jun 30, 2016: **Bynum email to Pelcher (June 30, 2016 2:59 PM) – pertinent excerpt**

“George will have to answer your bankruptcy question – we delegated that to him”

Aug 19, 2016: **Pelcher email to Bynum (August 19, 2016 8:43 AM) – pertinent excerpt**

“Al: As you may know, the Santee Cooper meeting on Monday, August 22nd. There will be the now normal update on V.C. Summer Units 2 and 3 in Executive Session. I will be on hand to answer questions of a legal variety that may arrive. “

“QUESTION: If asked by a board member in Executive Session about the status of securing project bankruptcy counsel, what should I tell them?”

Sep 28, 2016: **Pelcher email to Wenick / Bynum (September 28, 2016 2:20 PM) – pertinent excerpts**

“George/Al: I was on the Executive Floor today and a question came up about whether George has made any progress in identifying a project bankruptcy counsel? You may recall, that this is a matter that our joint boards discussed during their June 20th meeting. I have pasted below for your convenience prior Email on this matter.”

“The next Santee Cooper Board meeting is scheduled for October 14th and I anticipate this issue coming up at that time.”

Oct 24, 2016 **Carter and Baxley travel to New York and** meet with Dentons, LLC attorneys regarding project bankruptcy counsel.

Oct 25, 2016 **Carter letter to Marsh:**

During the June 20 joint meeting, members of both our Boards expressed concern about the financial difficulties being faced by Toshiba Corporation and Westinghouse Electric Company and how those problems could possibly impact the timely and successful completion of the project. One action item that SCANA agreed to take on was securing Project Bankruptcy Counsel who would help us think through Toshiba/Westinghouse insolvency scenarios so that we might begin planning now on how mitigate the impact of such an unfortunate possibility. Indeed, in a June 16, 2016 email to me, you expressed the very same concerns describing “the potential bankruptcy of Toshiba or Westinghouse [as] critical” but expressing the “prefer[ence] to have some detailed discussions and debate within our project teams before making a formal presentation to either of our Boards.” The time for that formal presentation to the Board has arrived.

Oct 28, 2016 **Email from Baxley to Marsh and SCANA legal team:**

I’m pleased to report that this week we have located bankruptcy counsel for the nuclear construction project. Stuart Caplan of Dentons New York office has assembled an energy/large construction group with whom we met this week. Stu is well known to Santee Cooper and has represented us in multiple issues over three decades. He is assisted by Farrington Yates who focuses on large scale construction bankruptcies representing creditors. The third member of the team is a large construction project risk avoidance specialist who has litigated the aftermath of multiple mega projects and personally knows at least one of our DRB—John Hinchey—and made several accurate observations about his personality.

No reply received from any recipient.

Confidential/Proprietary/Attorney Work Product

EPC Securitization Assessment

In the event that Westinghouse Electric Company (WEC) is unable to complete the VC Summer nuclear construction project for the fixed price option to which it has agreed, and in the further event that WEC voluntarily or involuntarily ceases work on the project on either a temporary or permanent basis, this document outlines and assesses the various EPC and contractual provisions already in place that provide protection for the Owners (Section 1); various additional securitization instruments that are currently available in the marketplace (Section 2); and, offers a recommendation for how the Owners might proceed at this time to best respond to such an event (Section 3). Where included, italicized terms are direct quotes from contract documents.

SECTION ONE—EPC AND CONTRACT PROVISIONS ALREADY IN PLACE

I. TOSHIBA PARENTAL GUARANTY.

- Contractual References: EPC Section 8.6(a); EPC Exhibit I-1 (Guaranty of Toshiba); October 2015 Amendment Exhibit F (Consent of Guarantor).
- Potential Benefit to Owners¹: This guaranty is capped at 25% of the total construction cost paid by Owners under the EPC (see EPC Section 17.2). As of September 2016, Owners' payments total \$6.4 Billion, this guaranty has a value of \$1.6 Billion. The total amount of Owners' payments under the EPC to finish the project will be approximately \$11 Billion; thus, as Owners make final payment, the parental guaranty value will be \$2.75 Billion.
- Cost of this Protection: Part of the consideration for the May 23, 2008 EPC agreement.
- Description and Payment Trigger: This instrument guarantees ". . . the prompt and complete payment, when due and owing, of the payment obligations of Westinghouse under the terms of the [EPC]." *If Westinghouse fails to pay the Guaranteed Obligations, then Guarantor shall promptly pay for such obligation following written notice from the Counterparty . . .*
- Limitations/Challenges:
 - ✓ This is a payment bond, but not a performance bond. Thus, if Westinghouse is unable to finish the Project, Toshiba will not step in to finish it.
 - ✓ Toshiba's liability under the Parental Guaranty is limited to the same extent Westinghouse's liability is limited under the EPC, including but not limited to the "Maximum Total Liability; Time Limitation" set forth in ALL CAPS in Section 17.2 of the EPC.

¹Assessing, quantifying, and actuarially determining the likelihood of attachment of counterparty liability is a multi-discipline exercise beyond the scope of this document. Monetary figures contained in Section One are approximations subject to change based upon percentage of completion of the nuclear project, creditworthiness of the counterparty, ongoing contract negotiations, and potential decisions of the Dispute Resolution Board.

- ✓ The value of this Guaranty is dependent upon Toshiba's financial wherewithal, this obligation is an unsecured debt likely subordinate to other debts/encumbrances of Toshiba.

- Status: The Guaranty of Toshiba was executed and formally delivered to the Owners on May 23, 2008; The Consent of Guarantor was executed and delivered on October 27, 2015. [NOTE: The latter document was required since the October 2015 Amendment, which included the Fixed Price Amendment, necessarily increased risk to Toshiba.]

II. WESTINGHOUSE 'PERFORMANCE' BOND.

- Contractual References: EPC Section 8.6(c)
- Potential Benefit to Owners: Bond face value \$45,000,000.
- Cost of this Protection: \$934,000 premium per year paid by Owners.
- Description:
 - ✓ Entitlement to the bond triggered by Toshiba's credit rating being "... below both BBB (by Standards and Poor's) and Baa2 (by Moody's) ..."
 - ✓ Limitations on value of Bond: "The value of the Westinghouse Bond shall be adjusted on an annual basis to be equal to fifteen percent (15%) of the highest, projected three (3) months billing for Westinghouse's portion of the Work during the applicable year ... but, under no circumstances, shall the value of the bond be less than ten million dollars (\$10,000,000) or such lower amount as mutually agreed by the Parties, or greater than one hundred million dollars (\$100,000,000)."
- Limitations/Challenges: This is not 'performance' bond. It is a 'payment' bond only.
 - ✓ Although Section 8.6 is titled "Security for Payment and Performance", this bond is for payment of outstanding subcontractor liens only, and does not require WEC to arrange for completion of construction.
 - ✓ The Owners are responsible for the cost of the bond.
 - ✓ The amount of the potential payout under the bond is capped.
- Status and Payment Trigger: After negotiations with the Owners, Westinghouse provided two instruments dated April 8, 2016 styled "Irrevocable Standby Letter of Credit" issued by Mizuho Bank, Ltd. And Sumitomo Mitsui Banking Corporation. Each letter of credit is in the amount of \$22.5 million, US Dollars, for a total amount of \$45 million, US Dollars. *"Funds against [the] Standby Letter[s] of Credit are available to [the Owner] against [the Owner's] written demands for payment delivered to [the banks], referring thereon to the number and date of this Standby Letter[s] of Credit, accompanied by a written and completed certificate executed by [the Owners] in the form attached as Annex I [to the Letters of Credit]."* Annex 1 requires that the Owners certify that the Owners provided Westinghouse *"with written notice of the [Owners'] intent to demand payment under the Standby Letter[s] of Credit at least thirty (30) days prior to the date of [the completed and executed Annex1]."*

III. INTELLECTUAL PROPERTY LICENSE.

- Contractual References: EPC Section 19.6; EPC Exhibits M-1 (Software License); M-2 (AP1000 Intellectual Property License - Westinghouse); and M-3 (AP100 Intellectual Property License - S&W).
- Potential Benefit to Owners: Value of license unliquidated, plants cannot be operated without license.
- Cost of this Protection: Part of the consideration for the May 23, 2008 EPC agreement.
- Description: Collectively, the three license agreements provide a *"fully paid-up, royalty-free, non-exclusive, transferable and assignable, perpetual . . . irrevocable and non-terminable . . . right and license . . ."* in all of the intellectual property needed to construct and operate the AP1000 facility.
- Limitations/Challenges: Section 365(n) of the Bankruptcy Code, 11 U.S. Code § 365(n), provides significant and enforceable protections to a Licensee when the Licensor is in Bankruptcy, allowing the licensee can elect to retain its rights to the licensed intellectual property. However, exercising those rights can be difficult absent a supplementary agreement where source codes and other forms of IP are placed into escrow and immediately available to the Licensee. (See, Part IV, below, INTELLECTUAL PROPERTY ESCROW.)
- Status: Exhibits M-1, M-2 and M-3 were fully executed on May 23, 2008, contemporaneous with the execution of the EPC.

IV. INTELLECTUAL PROPERTY ESCROW.

- Contractual References: See, Section 6 of EPC Exhibits M-1, M-2 and M-3, where Westinghouse, Stone & Webster and the Owners agree to enter into escrow agreements contemporaneously with the execution of Exhibits M-1, M-2 and M-3.
- Potential Benefit to Owners: Value of Escrow unliquidated, plants cannot be operated without source codes and other intellectual property.
- Cost of this Protection: Escrow established in the May 23, 2008 EPC agreement, but actual cost of populating Escrow not yet finalized, approximate \$5 million demand from WEC to complete this work.
- Description: Contemporaneously with execution of Exhibits M-1, M-2 and M-3, Westinghouse or Stone & Webster (as the case may be), the Owners and Business Records Management LLC executed three, three-party escrow agreements. The agreements describe the obligation of Westinghouse or Stone & Webster to make the deposits; labelling requirements; acceptance criteria; verification and audit of deposited materials; terms of payment; and a description of when the Owners would have a right to take possession of deposited materials, among other things.

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- Cost of this Protection: Part of the consideration for the October, 2015 Amendment to EPC.
- Description and Payment Trigger: "If a Unit is not 'placed in service,' as that term is used in Section 45J of the Internal Revenue Code, before January 1, 2021, Contractor agrees to reimburse Owner by February 1, 2021, the sum of \$250 million per Unit, expressed as a one-time lump sum payment. For purposes of this paragraph, the January 1, 2021 date can only be extended for the following reasons (i) material actions or omissions of Owner that cause a Unit not to qualify for tax credits; or (ii) extension of the tax credit date by the U.S. government. If Contractor becomes aware of any actions or omissions of Owner that Contractor believes may cause a Unit not to qualify for tax credits, Contractor shall provide Owner with reasonable notice of such actions or omissions."
- Limitations/Challenges: Owners' actual damages in the event that that one or both of the units fail to qualify for the production tax credit under Section 45J of the Internal Revenue Code will certainly be more than the amounts provided above. **[NOTE: Total Liquidated Damages limited to \$338 million per unit. October, 2015 Amendment ¶ 9.]**
- Status: This additional category of liquidated damages become effective on December 31, 2015, the effective date of the October, 2015 Amendment, subject to the approval of the exercise of the Fixed Price Option. Congress is currently considering legislation that would indefinitely extend the final date for PTC qualification.

VII. CONSTRUCTION MILESTONE PAYMENT SCHEDULE.

- Contractual References: October 2015 Amendment ¶12; EPC Section 8.2.
- Potential Benefit to Owners: Unliquidated but of vital importance to Owners to ensure that payments to WEC are commensurate with value of construction actually completed on site.
- Description: Once established by agreement of the parties or, absent agreement, by the Dispute Resolution Board, the Construction Milestone Payment Schedule will replace all existing Payment Schedules in the EPC.
- Limitations/Challenges: In order to discourage Westinghouse from walking away from the job or pursuing a strategic bankruptcy to reject the EPC as an uneconomic executory contract, the Construction Milestone Payment Schedule must be designed such that continuing construction work under the contract is more economically viable for WEC than walking away from the project. Thus, if payments under the Constructed Milestone Payment Schedule are unduly front-loaded, that could incentivize WEC to repudiate the contract in later years, particularly if the cost to WEC of completing the contract is more than the remaining fixed payments provided for under the Fixed Cost Option.
- Status: The milestone payment schedule was referred to the Dispute Resolution Board on August 1, 2016. The final form of schedule is pending before the DRB and presently unknown, a final Order will be issued by the DRB no later than December 2, 2016.

SECTION TWO—SECURITIZATION INSTRUMENTS CURRENTLY AVAILABLE IN MARKETPLACE

The Owners face two distinct types of risk in completing the nuclear construction project. Because of the material differences in how these risks are mitigated, each is discussed separately. Pricing and market information included below have been obtained with the assistance of risk brokerage firm McGriff, Seibels, and Williams.

2(A): FAILURE OF TOSHIBA TO HONOR THE PARENTAL GUARANTY

Two factors have significantly impacted the materiality of Toshiba's counterparty credit role in the VC Summer nuclear construction project. First, when the EPC was executed in 2008, Toshiba was one of the world's largest corporations, and carried a long-term unsecured credit rating by Moody's of A3, an Investment Grade rating in the medium range. Second, Contractor's risk profile on this project was significantly heightened by the October, 2015 Amendment to the EPC, in which the Owners elected a fixed price option, transferring to the Contractor the risk of construction cost overruns and delays. Thereafter, as a result of a revelation of accounting irregularities and overstated profits unrelated to the nuclear project, Toshiba's long-term unsecured credit rating deteriorated rapidly to a Moody's grade of Baa2, in the lower end of an investment grade. By March, 2016, Toshiba's long-term unsecured credit rating by Moody's was B3 with outlook negative, B3 is considered to be in the highly speculative non-investment grade.

By providing a parental guaranty that has an ascending value with a current estimated exposure of \$1.6 Billion US dollars, Toshiba's parental guarantee of WEC's EPC obligations forms the cornerstone of the Owners' protection in the event of WEC's inability to complete the project. [NOTE: Section 17.2 of the EPC caps Westinghouse's contractual obligation and by implication Toshiba's guaranty obligation at 25% of the total construction cost paid by Owners under the EPC at a given point in time. As of September 2016, Owners' payments total \$6.4 Billion, this guaranty currently has a value of \$1.6 Billion.] The security instruments discussed below are currently available to the Owners to backstand this guaranty.

I. Credit Insurance Market Instrument

- Description: Owners seek to securitize risk of default in the event that Toshiba is unable to honor the terms of its parental guaranty. Because of the size of this security, where the typical market large scale credit insurance policy does not exceed \$100 Million in exposure, no "off the shelf" product exists to provide this amount of coverage, although the brokerage firm expressed belief that \$1 Billion worth of coverage could be potentially provided. If so, an instrument this large would require a combination of insurers and/or instruments. The insurance market's policy terms would be on a manuscript basis and written to be congruent with the EPC language with respect to when coverage becomes payable.

Our risk/insurance broker has approached over 40 insurers and capital providers, including Lloyds of London and Berkshire Hathaway, in order to gauge an appetite for this risk. While some markets have responded with expressions of interest, the majority of standard credit insurance markets find this challenging to insure due to the (1) non-investment grade credit rating, (2) complex structure of the guaranty, and (3) tenure of the guaranty. The firm is also awaiting feedback from Japanese-based insurers and a World Bank-affiliated insurer who may be more accustomed to dealing with this level of risk.

- Cost of this Protection: Estimated between six (6%) and nine (9%) percent of insured total, depending upon whether coverage is for a specific period or for the term of the construction project. For \$1 Billion in coverage, this premium ranges between \$60 and \$90 million.

- Limitations/Challenges:
 - ✓ Substantial cost.
 - ✓ Unique and one-off nature of instrument.
 - ✓ Complexity of this transaction with multiple parties will present difficult legal and logistical issues, raising likelihood of potential litigation if instrument becomes payable.
 - ✓ Provides only partial coverage in event of total collapse of Toshiba, additional coverage cost prohibitive.

II. Credit Default Swap (CDS)

- Description: A credit default swap is a type of contract that offers a guarantee against the non-payment of a financial instrument, in this case the Toshiba Parental Guaranty. In this agreement, the seller of the swap will pay the buyer in the case of a credit default by the third-party (Toshiba). If no default occurs, the seller of the swap will have collected a premium from the buyer. Owners seek to securitize \$1 Billion worth of Toshiba's risk in the event that Toshiba is unable to fund its parental guaranty by purchasing Toshiba credit default derivatives. There is a limited liquid market for Toshiba securities and the current known capacity within the marketplace is approximately \$100 Million; thus, Owners would be required to find a willing seller to engage a sale of this magnitude.
- Cost of this Protection: Annual premium of 130 basis points (as of October, 2016) for a five year contract for \$100 Million, a total of \$6.5 Million. For an increase in capacity if available, a higher premium may be demanded by seller.
- Limitations/Challenges:
 - ✓ Requires Toshiba bankruptcy or default on corporate securities/debt before payable.
 - ✓ Subject to regulation by the CFTC under the Dodd-Frank Wall Street Reform Act.
 - ✓ Pricing will increase if Toshiba finances further decline.
 - ✓ Market capacity for \$1 Billion in Toshiba CDS may not exist.
 - ✓ Finding entity(ies) with adequate financial wherewithal to engage in CDS of this magnitude.

2(B): TOSHIBA PARENTAL GUARANTY IS HONORED, BUT INSUFFICIENT TO FUND REMAINING WORK

I. STANDARD PERFORMANCE BOND

- Description: Typical in construction projects, Owners seek to guarantee the performance of WEC to complete nuclear construction should WEC fail to do so.
- Cost of this Protection: **Unavailable** in current markets because the work is well under way and the risks of delay and cost overruns have already attached. If it could be purchased, any performance bond at this juncture would simply be a pass through of direct costs of construction to the purchaser, with an administrative fee added.

SECTION THREE—RECOMMENDATIONS

Recommendation One—Retain Bankruptcy Counsel

Owners should move immediately to engage bankruptcy counsel. The shift of risk to the Contractor by the fixed price option, together with Owners' primary security in the event of default being vested in Toshiba's parental guaranty, considered in light of the substantial decline in Toshiba's creditworthiness since execution of the October 2015 Amendment, all require Owners to proactively anticipate Contractor bankruptcy. Counsel will assist the Owners in preparing for the potential that Toshiba could be forced into bankruptcy by its current financial status, and, once fixed price funds are exhausted, WEC could seek strategic bankruptcy protection to revamp the terms of the fixed price contract. This is not solely a defensive exercise. In ongoing negotiations with WEC over contract administration, opportunities may present for the Owners to take additional steps directly with WEC and Toshiba that provide increased project security. Moreover, the bankruptcy counsel chosen should be part of a team with large construction project litigation and negotiation experience, as well as energy sector experience, to navigate the unique combination of particular rules and legal nuances applicable to Contractor bankruptcy in the midst of a nuclear construction project.

After national review of available firms with the focused experience required, it is recommended that Owners retain the New York office of Dentons, LLC in this role, and more specifically the legal team consisting of energy attorney Stuart A. Caplan, bankruptcy specialist D. Farrington Yates, and power plant construction dispute attorney Phillip White. These attorneys and the Dentons, LLC firm have been vetted for representation conflicts with WEC and Toshiba, and there are none.

Recommendation Two—Seek Additional Securitization Through Contractor Negotiation

As of this writing, there is a dispute pending between the Owners and WEC before the Dispute Resolution Board (DRB) with respect to establishing the construction milestone payment system. There are multiple potential future disputes that may come before the DRB, as well as other negotiations between the parties that may not rise to that level. These potential disputes include issues such as finalizing milestone completion and acceptance criteria, Contractor complaints when milestones are not met and payments not made, populating the Intellectual Property Escrow going forward, setting monthly mandatory construction progress targets, and many others. Each of these disputes represents an opportunity to negotiate additional project security from WEC and Toshiba, and the Owners must be focused and resolved to avail themselves of these potentialities.

Recommendation Three—Credit Insurance Or Performance Bond Is No Longer A Viable Option

At this point in the construction project, a performance bond or credit insurance instrument is not available to the Owners. These devices are typically purchased at the start of construction before any risks of delay, cost overruns, or unacceptable contractor performance occurs. In this project, the Owners chose other methods of security which at the time were prudent, namely the guaranty of Toshiba. Now that slow construction progress to date has resulted in approximate three year delays for each unit and cost overruns for Santee Cooper alone in excess of \$1 Billion, no A-rated insurer or bonding entity would be available to take on such a risk without demanding a substantially enhanced premium. Second and third tier insurers may be interested in the risk for a significant premium, but cannot provide the necessary wherewithal. These conditions require Owners to search world markets for capital providers that might be interested in a one-time transaction, a situation fraught with

difficulty, legal complexity, and substantial risk to the Owners. Even if readily available, the cost of these instruments at this juncture is prohibitive.

Recommendation Four—The Preferred Form For Additional Security Is A Letter of Credit From A Qualified Financial Institution

There are already two letters of credit (LOC) securing the construction project. The WEC performance bond (which actually functions as a payment bond) referred to in Section One of this document is underwritten by LOC from Mizuho Bank, Ltd. and Sumitomo Mitsui Banking Corporation for an aggregate of \$45 million. Collection of benefits under an LOC is less complicated than filing a claim under a surety bond or credit risk instrument. The terms of collection are set forth in the LOC itself; once those terms are met and the appropriate proof are provided to the financial institution, payment is issued to the Owner/Beneficiary of the LOC. Payment is not subject to third party claims, no competing creditor is entitled to prevent or delay payment, and bankruptcy of the Contractor on whose behalf the LOC was initially issued does not stop payment. Conversely, guaranties, surety bonds, and insurance policies are often litigated as a defensive tactic prior to payment, and may be subject to creditor claims in the event the Contractor files bankruptcy. Claims of this nature can result in years of delay, often leading to compromise and acceptance of a lesser sum than face value.

Recommendation Five—A Credit Default Swap Is Currently The Most Economical Security Instrument Available In Financial Markets, But Purchase Is Not Recommended At The Present Time

Under current market conditions, CDS securities may be purchased for an annual premium as low as 130 basis points, a significantly lower cost than any other securitization instrument. Further, a Toshiba CDS instrument directly addresses one of the main Owners' project securitization concerns—Toshiba's declining creditworthiness and potential inability to fund the parental guaranty. On the other hand, collection of CDS proceeds requires bankruptcy of the underlying company issuing the credit, and the government of Japan has shown great reluctance to allow primary national industries to fall into bankruptcy. Global conglomerate Toshiba is chief among Japanese primary industries. Moreover, for a public power entity with open books or an investor owned utility with fiduciary responsibilities to shareholders, it is difficult to explain a position of entering a significant contract with a company and subsequently betting against that company in financial markets, with significant assets at risk either way. This is particularly true when the purchased CDS does not arise directly from nuclear project debt. Finally, Toshiba has taken significant steps to return to financial equilibrium including removal of its Board, a complete change in executive management, and substantial sale of assets, and the government of Japan has imposed strict audit measures to assure and closely monitor the company's progress. For these reasons, it is not recommended that Owners move into the CDS market at this time; rather, a policy of closely watching Toshiba's financial condition is appropriate, and taking action in the financial markets at the appropriate time should there be additional decline.

SUMMARY AND CONCLUSION

The Owners have taken already significant steps to securitize the construction of units 2 and 3 at the Virgil C. Summer Nuclear Generating Station. These steps, outlined in Section One, have thus far withstood a global economic downturn, significant decline in Toshiba's creditworthiness, and poor project performance by WEC and its former consortium partners. In current market conditions, there are no reasonably available or appropriately targeted securitization instruments recommended for purchase at this time for reasons outlined in Sections Two and Three of this document. The Owners are better served at present to employ whatever negotiation opportunities arise with WEC in the course of

ongoing construction to maximize security provided by WEC and Toshiba, preferably at Contractor's expense, with a desire for any additional security to be provided through a letter of credit from a qualified financial institution.

Respectfully Submitted,

Nuclear Project Securitization Team

J. Michael Baxley
Michael R. Crosby
Elizabeth H. Warner
Stephen R. Pelcher
Rahul Dembla

November 28, 2016

**V.C. Summer – Units 2 &3
President's Meeting Agenda
April 13, 2016**

Santee Cooper proposed objectives for several of the agenda items.

1. **Project update** – Ron Jones, Carl Churchman and/or Jeff Hawkins to give status then be excused.
2. **Status of milestone payment schedule**
 - **Clearly communicate to Danny Roderick that currently a large delta exists between the Owners' position and WEC's position on cash flow, particularly on the front end of the schedule.**
 - **Set a near term date certain for Owners and WEC to resolve all issues outstanding on milestone payment schedule or agree same will be deferred to DRB.**
 - **Set a near term date that WEC will complete its work necessary to finalize the DRB.**
3. **Toshiba's Financial Health:** This issue needs to be discussed in enough detail to get a good understanding regarding Toshiba's financial health going forward. This includes the status of the performance bond or letter of credit. A break-out session with just WEC may be necessary.
 - **Receive a report from Toshiba (Shiga) on this issue, including realistic timeline when Toshiba expects good market news and up-trend on credit ratings.**
 - **Receive a report from Toshiba (Shiga) on how V.C. Summer Project has been handled by WEC and Toshiba.**
 - **Assuming performance bond or LOC is not in place by April 13, set a near term date certain to complete this work.**
4. **\$100M payments:** As a part of the recent Amendment, WEC negotiated for increased cash flow for a period (up to 8 months) prior to implementation of an approved new Construction Milestone Payment Schedule. The stated need for increased cash was to ramp-up construction on the Project, in part, to offset previous poor performance by Chicago Bridge & Iron. The following chart compares Q1 actual cash flow to WEC parallel invoices:

2016		WEC	
<u>Pay Period</u>		<u>Parallel Invoices For</u>	
		<u>Work Completed</u>	
Jan	\$100M	\$34.7M	\$65.3M
Feb	\$100M	\$44.6M	\$55.4M
Mar	\$100M	\$62.9M	\$37.1M
			\$157.8M

As shown, the projected true-up is estimated to be \$157.8M after 3 payment cycles. If this trend continues, absent an immediate ramp-up of the work, a ~\$300M payment would be due the owners from WEC. This issue needs to be discussed in detail with WEC & Fluor.

- Clearly communicate to Danny Roderick that in the absence of adequate assurance that true-up funds will be immediately available to the Owners at the 6 month mark, Owners will not continue to make the \$100M payments beginning on the April installment.
 - Owners position forward will be to average the phantom invoices received to date, fund that average, and hold the balance of the April, May, and June \$100M installments in escrow for WEC to use should it elect to ramp up work on site.
 - Given the current status of Toshiba's finances, the adequate assurance would require an irrevocable letter of credit, deposit of funds into an account in the Owner's name, or some similar high level of reliability.
5. **Construction Performance:** It is requested that Fluor be asked to report-out on Q1 construction performance – as found conditions, and its success to date on ramping-up work and increasing productivity. Fluor's transparent and independent assessment would be the objective of this discussion. What obstacles are being found, what is being done to remove those obstacles, and what should the Owner's expectation be for increased construction performance going forward. When will they get to the 3%/month completion goal. This could be tied in with the update provided in item 1.
- Gain a clear understanding of what Fluor believes to be the major impediments to construction progress on the Project.
 - Who owns each impediment?
 - What is being done to resolve the impediment?
 - Is the solution sufficient to meet schedule needs?
 - Gain a clear understanding of a timeline for achieving and sustaining a 3% monthly progress rate on construction.
 - Gain a clear understanding of Fluor's 2016 plan to add craft labor.
6. **Engineering & Procurement (focus on nuclear island):** WEC detailed status of engineering design, procurement, change paper and its collective impact on nuclear island construction productivity. This topic may shake-out of discussion on construction performance above.
- Gain a clear understanding of what WEC is doing to mitigate engineering impacts to procurement?
 - Who is leading this effort?
 - How many resources are assigned and where are they located?
 - Is effort sufficient to meet schedule needs?
 - Gain a clear understanding of what WEC is doing to mitigate engineering and work package impacts to construction?

- Who is leading this effort?
- How many resources are assigned and where are they located?
- Is effort sufficient to meet schedule needs?

7. **Schedule Validation:** WEC / Fluor detailed update on status of this work, obstacles, etc.

- Commit to a date certain that schedule validation work will be completed.
 - Gain a clear understanding of what the work product will provide.
- Gain a clear understanding of the project metrics that Fluor intends to put in place and when.

8. **Update on the award of the air inlet/tension ring fabrication contract:** We understand a final contract has not yet been signed with the selected vendor.

9. **Update on Unit 3 shield building mitigation plan:** Is NNI opening up other work areas or do they plan to move some SB panels to other manufacturers.

10. **Update on Sanmen schedule:** this should include the recently schedule purportedly announced by CNNC

11. **Fixed price option:** We should provide an update on the plans for evaluating the fixed price option including PSC filings.

12. **CEO only executive session**

Carter, Lonnie

To: MARSH, KEVIN B
Subject: RE: Summer Units 2 & 3

Kevin:

Thank you for your email concerning management of the new nuclear project and our negotiations with the Consortium.

1. Santee Cooper is in agreement on moving forward to engage additional resources in construction management. I recommend that Jeff Archie and Michael Crosby work together to develop a job description and placement for you and I to concur. This will allow us to better identify potential candidates. My thinking is that the first task for this individual will be to determine the scope of the task at hand, and the number of personnel/resources needed.
2. With respect to negotiating a new project schedule with the Consortium, it is my sense that neither the Owners nor the Consortium have any real confidence that the proposed rollout schedule that the Consortium shared with the Owners on August 1st is achievable. I am concerned that we have become tied to artificial dates, both past and future, often driven by disclosure considerations. The Owners and the Consortium need a schedule that we all have confidence can be achieved and thereby hold the Consortium accountable to achieving milestones. Since the Consortium is so far behind schedule, they should already take steps to mitigate any further delays.

For the Owners to have real conversations and negotiations with the Consortium, we must first complete a detailed review of the schedule information provided based upon the critical path forward, which necessarily includes a consideration of the Shield Building. This would include collectively studying and discussing the June 2019 IPS and supporting Shield Building critical path documentation for the purpose of developing a list of concerns that need to be addressed by the Consortium. **Redacted - Privileged** we should ask George Wenick and

Frank Elmore

Redacted - Privileged

Redacted - Privileged

Redacted - Privileged

These two points of information would form the basis for further conversations and negotiations with the Consortium going forward.

As I shared with you before, to the extent that the Consortium is requesting sums from Owners to which they are not presently entitled, Santee Cooper will not agree to pay such amounts absent new and substantial consideration to support such payments. Rewarding the Consortium for poor performance and missed schedules would be counterproductive. Although Santee Cooper is open as what new and substantial consideration might look like, a Toshiba Performance Guaranty, unbounded by those provisions in the EPC limiting the Consortium's liability, might be worth considering.

3. With respect to disclosure, as you are aware, Santee Cooper intends to issue refunding bonds next month, and must finalize related disclosure documents this week. Our various stakeholders are already aware from the previous disclosure that there has been a delay in construction, and are awaiting further information on the financial component of that delay. We dispute the Consortium's

entitlement to almost all of the additional costs (with the exception of agreed site layout and cyber security modifications, less than \$55M which remains to be negotiated), and do not intend to pay any further sum unless we are convinced by the Consortium of their right to payment under the EPC agreement and the accuracy of the requested amounts. Based upon legal advice,

Redacted - Privileged

Redacted - Privileged

Please remember that I am not available for a meeting with the Consortium on October 13 due to longstanding schedule commitments. I look forward to discussing these various issues with you and will make my schedule available to that end. I agree with you that we need a strategy for our further conversations and negotiations with the Consortium because time is now of the essence for this Project.

Thanks,

Lonnie

From: MARSH, KEVIN B [mailto:KMARSH@scana.com]

Sent: Wednesday, September 03, 2014 2:06 PM

To: Carter, Lonnie

Subject:

Lonnie,

I met with my team this morning on a number of nuclear matters and wanted to share our thoughts with you:

1. We discussed the preliminary number given to us late last week by the consortium for delay costs associated with the revised baseline schedule. As you and I discussed last week, this number is very preliminary and will be the basis for lengthy negotiations that will take place over the next several months. I am confident that the number will change as we work to secure a more definite commitment from the consortium with more of their "skin in the game". Since we have already disclosed that we expected to receive a preliminary number, that there would be negotiations around it, and that we plan to complete those negotiations by year end, we don't believe any additional disclosures about the dollar amount of the preliminary cost delay number are necessary. I know that you are planning a bond financing later this month, so I wanted share our thoughts with you and your team with the goal of making our financial disclosures consistent.
2. Our team will begin a review of the delay cost financial information as part of the overall evaluation of the revised baseline schedule. We welcome the assistance of your team in this process. Once we have reviewed the numbers and the schedule, we will be in a position to develop our strategy for negotiations with the consortium that will begin on October 13th.
3. We are ready to move forward with hiring/engaging an additional resource with significant construction expertise to assist us with evaluating the construction schedule and project status. I

believe having this person on our staff vs. working as a consultant will avoid conflicts with the consortium on proprietary matters. I would recommend that Jeff Archie work with Mike Crosby to help identify potential candidates for this role.

4. Your legal team asked George Wenick

Redacted - Privileged

Redacted - Privileged

I would be pleased to discuss any of these issues further as we both continue to work hard keep our project moving in the right direction. I appreciate and welcome your thoughts.

Kevin

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If you have questions, please call the IT Support Center at Ext. 7777.

Ronald Lindley P. Scoville

August 14, 2014

Subject: V.C. Summer Units 2 and 3 Guaranteed Substantial Completion Dates

Reference: (1) Engineering, Procurement, and Construction Agreement for AP 1000 Nuclear Power Plants, Dated May 23, 2008 – V.C. Summer Units 2 and 3

Gentlemen:

- In December 2013, at the Q4 President's Meeting in Cayce, SC, the Owners became aware of a Consortium commitment to re-baseline the integrated project schedule.
 - Re-Baseline Schedule was promised to be fully integrated with all disciplines – engineering, procurement and construction.
- In Feb 2014, the Consortium discontinued monthly submittals to the Project of the project schedule due to the aforementioned re-baseline schedule effort.
- On Aug 1, 2014, nearly 6 months later, the Consortium presented to the Owners an IPS review document which indicated the Unit 2 substantial completion may be delayed until late 2018 or first half of 2019 ... and that Unit 3 would follow approximately 12 months later.
 - Presentation of this information required the Owners to make public financial disclosures on Aug 11, 2014.
- As of this this writing (and after several verbal requests), the Owners have not received the comprehensive, resource loaded re-baseline integrated project schedule promised at the end of 2013.
- We respectfully request that this schedule be submitted to the Owners immediately.

- Regarding the Schedule Success Team ... upon Owner receipt / evaluation of the requested / promised schedule ... the Owners will evaluate the need for such an effort.

We welcome the opportunity to work with the Schedule Success Team as it attempts to improve on the interim milestones and substantial completion dates reflected in the Consortium's preliminary re-baselined schedule. To make our participation as meaningful as possible, we request that you immediately provide us with an electronic copy of your preliminary re-baselined schedule for our review.